

GSA RESERVE CORP.

IBLA 81-514

Decided June 9, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim CA MC 6984 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date.

APPEARANCES: Edwin Grover, President, for GSA Reserve Corporation.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

GSA Reserve Corporation has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 16, 1981, declaring appellant's placer mining claim, The Dara (CA MC 6984), abandoned and void for failure to file evidence of annual

assessment work on or before December 30, 1980, pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4. BLM received appellant's notice of intention to hold on January 2, 1981, and its evidence of assessment work on January 5, 1981.

The claim was relocated on September 6, 1977, and conveyed to appellant on September 30, 1977. In its statement of reasons, appellant says that it followed the same procedure in 1980 as in the previous year and, in fact, mailed the evidence of assessment work earlier in 1980 than in 1979. It thus requests reinstatement of its claim.

However, information in the file indicates that appellant is apparently mistaken about its date of mailing. In 1979, its agent mailed to BLM on December 15 a copy of the assessment work previously filed with the county recorder, so that the second copy mailed by letter dated December 26 was merely duplicative. Even so, the December 26 letter was not received by BLM until December 31, 1979. In 1980, appellant by letter dated December 29, 1980, indicated its intention to hold the claim. This letter was not received by BLM until January 2, 1981, 3 days beyond its due date. Evidence of annual assessment work was not filed with BLM until January 5, 1981.

[1] The failure to file the instruments required by section 314 of FLPMA in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner. See 43 CFR 3833.4.

[2] The mailing of notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Assoc., 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). In the absence of evidence that BLM did receive either timely evidence of assessment work performed on appellant's claims or a timely notice of intention to hold, BLM properly declared the claims abandoned and void. Gary L. Barton, 47 IBLA 386 (1980). This Board has no authority to excuse lack of compliance with the statute or to afford relief from statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Acting Administrative Judge

Bruce R. Harris
Administrative Judge

